IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.281 OF 2007

Mrs.Swati Shete ...Applicant

vs.

Sushilkumar Shete ...Respondent

Mr.Abijit Sarwate for the Applicant

CORAM: A.S.OKA,J.
DATE : JUNE 26, 2007.

P.C.:

1. Heard Advocate for the Petitioner. By the order dated 21st April 2007 impugned in this Revision Application, the learned Judge of the Family Court has rejected the Application made by the Petitioner for rejection of the plaint filed by the Respondent.

2. Initially, a Special Civil Suit was filed by the Respondent in the Court of Joint Civil Judge (S.D.), Pune. By order dated 21st November 2006, the plaint was ordered to be returned for presentation to the proper forum. Accordingly, the Respondent has taken back the plaint and has instituted the same in the Family Court at Pune. The plaint was renumbered. The Petitioner who is the respondent in the renumbered Petition, filed an Application for rejection of the plaint on the ground that the Petition was filed without complying with the provisions of Rule 9 of Order VII of the Code of Civil Procedure,1908. At the time of hearing of the

said Application, a submission appears to have been made that the summons or notice of the Petition filed in the Family court was not served to the Petitioner. The learned Judge of the Family Court has rejected the Application.

3. The first submission of the Advocate for the Petitioner is that the Petition in the Family Court was a fresh Petition and therefore, in view of the settled legal position, on its presentation, the said Petition will not be a continuation of the suit which was earlier filed in the civil Court. He, therefore, submitted that adequate number of copies of the Petition ought to have been supplied by the Respondent. He submitted that the notice or summons of the Petition ought to have been served to the Petitioner. He submitted that as there was a failure to comply with this mandatory requirement, the Petition ought to have been rejected by invoking the provisions of Rule 11 of Order VII of the said Code.

4. I have considered the submissions. The petitioner has allegd non-compliance of procedural requirments. The non-compliance with the rules of procedure is normally not fatal. In any event, the Petitioner is admittedly possessing a copy of the Petition filed by the Respondent and therefore, there is no prejudice caused to her.

5. The second submission is as regards failure to serve the

summons or notice of the Petition. After the order dated 21st November 2006 was passed by the Trial Court of returning the plaint, a further order was passed on 4th January 2007 under sub Rule 3 of Rule 10-A of Order VII of the said Code fixing the date of appearance before the Family Court. In view of sub Rule 4 of rule 10 A of Order VII, once the date of appearance before the court to which returned plaint is to be presented is fixed, it is not necessary for the court in which the plaint is presented after its return to serve the defendant with a summons for appearance in the suit unless that court for reasons to be recorded otherwise directs. Therefore, there was no question for the Family Court issuing a fresh summons or notice.

6. In any event, the Petitioner has appeared before the Family Court. The Petitioner is possessing a copy of the Petition filed by the Respondent. The grounds which are raised in this Petition are very hypertechnical in nature which relate to non compliance with procedural requirements. This not a case where there is a prejudice caused to the Petitioner. There is no merit in the Petition and the same is rejected.

JUDGE